No. 16,104

In the

United States Court of Appeals

For the Ninth Circuit

States Marine Corporation of Delaware, a corporation,

Appellant,

vs.

Victory Carriers, Inc., a corporation, and Shipowners & Merchants Towboat Co., Ltd., a corporation, Claimant of the Tug Sea Scout,

Appellees,

and

Shipowners & Merchants Towboat Co., Ltd.,

Appellant,

vs.

Victory Carriers, Inc., a corporation,

Appellee.

Answering Brief of Appellee Victory Carriers, Inc.

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SUBJECT INDEX

TABLE OF AUTHORITIES CITED

STATUTES

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JURISDICTION

The basis for the jurisdiction of this court is accurately set forth in the briefs of both appellants.

STATEMENT OF THE CASE

This case arises out of a collision between the Tug Sea Scout and the SS Lewis Emery, Jr. which occurred while the Sea Scout was assisting to undock the SS Lewis Emery, Jr. Libelant Victory Carriers, Inc. was the owner of the SS Lewis Emery, Jr. States Marine Corporation of Delaware (hereinafter referred to as "States Marine") was her time charterer under a standard form of charter known as the Government Form approved by the New York Produce Exchange. Shipowners & Merchants Towboat Co., Ltd. (hereinafter called "Red Stack") was the owner and operator of the Tug Sea Scout and the employer of her master and crew. The District Court found the collision due to the combined negligence of two employees of Red Stack; (1) the mate and operator of the tug, and (2) the master of the tug who was acting as pilot on the bridge of the SS Lewis Emery, Jr. The court found no negligence on the part of the master, officers or crew of the SS Lewis Emery, Jr. These findings are not disputed. Accordingly, the District Court entered a decree in favor of libelant Victory Carriers, Inc., owners of the SS Lewis Emery, Jr., against Red Stack.

We wish to make it clear at the outset that libelant Victory Carriers, Inc. did not sue States Marine, stated no claim against States Marine and no decree was entered against States Marine in favor of libelant Victory Carriers, Inc. States Marine was impleaded by Red Stack and is only involved by reason of a breach of a contract it entered into with Red Stack known as the "pilotage clause" resulting in an indemnity liability of States Marine to Red Stack for said breach. Appellant States Marine implies throughout its brief that Victory Carriers, Inc. has made a claim against it and states expressly on page 16 of the brief: "The shipowner through indirection, is attempting to pass

on (the loss) to the merchant time charterer (States Marine)".[1] It should be too obvious to require recitation that Victory Carriers, Inc. has no interest in States Marine's liability, if any, to Red Stack. Our cause is and always has been a simple action in tort against Red Stack.

The present appeal arises out of the attempts of States Marine to escape its breach of contract liability to Red Stack. One device it uses is to argue that Victory Carriers, Inc. should not have been granted full recovery against Red Stack in the first place because (1) Red Stack should derive some benefit from a clause in the charter between States Marine and Victory Carriers (to which Red Stack was not a party) providing that Victory Carriers remain responsible for navigation of the vessel; and/or (2) that Victory Carriers, Inc. was bound by the pilotage contract (to which it was not a party). These two contentions are presented as "Argument I" and "Argument II", respectively, in appellant's brief. We shall deal with them in similar order herein.

Not long ago States Marine was sued in this district by Red Stack on another but different form of Red Stack pilotage clause (*People of State of California v. Jules Fribourg,* 140 F. Supp. 333, 1956 A.M.C. 939). District Judge Goodman in that case held, among other things, that States Marine as time charterer had no authority to bind the vessel to a pilotage clause and did not impliedly warrant that it had such authority. It was stipulated at the trial of the present case that the States Marine time charter of the Jules Fribourg was identical in form with that of its charter of the Lewis Emery, Jr. (Tr. 74). Subsequent to the *Jules*

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1. Appellant's irrelevant attempt to characterize itself as a "merchant" (p. 14, et seq. of Brief) should be viewed in the light of Clause 30 of the charter party, which gives States Marine the "privilege of painting its house flag and markings on vessel's funnel."

Fribourg decision, Red Stack revised its pilotage clause by adding, among other things, a warranty of authority which Judge Goodman had found lacking in the *Jules Fribourg*. This revised pilotage contract which the court below found States Marine made with Red Stack and upon which States Marine was held liable, reads as follows:

> "When any pilot furnished by this company, including the master or other officer of any tug furnished to or engaged in the service of assisting or towing a self-propelled vessel, goes on board such vessel, whether or not the vessel has available for use or is making use of her own propelling power, it is understood and agreed that such pilot becomes the servant of that vessel and her owners in respect of all actions taken, orders given, or decisions made by him (or any omission thereof) while on board such vessel; and it is furthermore understood and agreed: (1) that the vessel and her owners will assume all liability for any loss or damage (including that suffered by any assisting tug) resulting from or arising out of the negligence or other fault of such pilot; (2) that neither this company nor such pilot nor any assisting tug, its owners, agents, charterers, operators or managers shall be liable, directly or by way of indemnity or otherwise, for any such loss or damage; and, (3) that each and all of the foregoing parties shall be indemnified and held harmless by the vessel and her owners with respect to any and all claims, by whomsoever asserted, arising by reason of such negligence or other fault.
>
> "If any such vessel is not owned by the person or company ordering the tug and/or piloting service, it is understood and agreed that such person or company warrants its authority to bind the vessel and her owners to all the provisions of the preceding paragraph and agrees to indemnify and hold harmless this company and such pilot and any assisting tug, its owners, agents, charterers, operators or managers, and each

of them, with respect to all losses, damages and/or expenses that may be suffered or incurred in consequence of such person or company not having such authority."

The warranty contained in the second paragraph of this clause is the portion which was added to meet the lack found in the *Jules Fribourg* case. States Marine claims that its liability on this warranty contract involves an issue "of considerable commercial importance". It is difficult to see any prospective commercial importance in the result that is reached in this case. The contract speaks for itself. States Marine would have had no liability had it not entered into it; nor would it have had any liability had it entered into the form used in the *Jules Fribourg* situation or the other two pilotage clauses which it claims it in fact entered into in this case (Opening Br. pp. 8 and 9). There is no evidence that it was required to make this contract. It was not necessary to use Red Stack pilots. There are many independent Bay pilots in the San Francisco Bay area (Tr. 70). One was a witness in this case. There are other tug companies (Tr. 70-71). States Marine asserts that Red Stack is the only tug company with deep draft tugs. There is no evidence and no basis for finding that this particular type of tug or any tug is needed. It is the pilot who decides what tugs, if any, are needed and what type (the *Jules Fribourg,* supra). Charterer only provides the pilot. If States Marine selects a Red Stack pilot he would probably select a Red Stack tug. If an independent pilot were consulted he would decide what tug, if any, he needed and order it from Red Stack or some other tug company. The

trading limits of the charter to States Marine were broad and within these trading limits the ship was required to go to ports of charterer's selection. Clause 16 of the charter provided "the vessel has liberty to sail with or without pilots". Quite naturally, therefore, the charter left it to the charterer to decide what, if any, pilot should be used and to make its own contract for pilotage and pay for it.

Therefore, the case involves no issue of commercial importance. The holding of the court below is simply that States Marine did not enter into the contract it now wishes it had. The decision on this contract is not likely to have any progeny of importance, even with Red Stack. Apart from the fact that the use and form of pilotage contracts may vary in different ports, the record shows that the Red Stack clause has been repeatedly revised and altered as the necessities of its business and customers demand. It is for the charterer to decide what contract it wishes to make. The authorities are in agreement with the court below that States Marine as time charterer under this form of charter had no authority to bind the vessel owner to any of its pilotage clauses. We shall now proceed to demonstrate that the two major arguments of appellant States Marine are without merit.

I. ANSWER TO "ARGUMENT I" OF STATES MARINE

The Contention That Red Stack Should Have the Benefit of a Clause in the Charter Between States Marine and Victory Carriers, Inc. Is Unsound and without Merit.

The authorities are uniform that shipowners may recover from the pilot for his negligence:

Barbey v. SS Stavros, (D.C. Ore., 1959) 169 F.S. 897;

Chase v. Hammond Lumber Co., (9th Cir., 1935) 79 F.2d 716, 1935 A.M.C. 1502;

The Eldena, (S.D. Tex.) 25 F.2d 312, 1928 A.M.C. 887;

The Dora Allison, (S.D. Ala.) 213 Fed. 645;

Burley v. Comp. de Nav. Fr., (9th Cir., 1912) 194 Fed. 335.

If the pilot is in the employ of a tug company, the pilot's negligence is imputed to the tug company and accordingly the shipowner may recover against the tug company absent being bound by a special release contract such as a pilotage clause:

Publicker Industries v. Tugboat Neptune Co., (3rd Cir., 1948) 171 F.2d 48;

The West Eldara, (2nd Cir., 1939) 104 F.2d 670; cert. den. 308 U.S. 607;

The Edward G. Murray, (2nd Cir., 1922) 278 F. 895;

The Dorset, (4th Cir., 1919) 260 F. 32;

The Algic, (S.D., Fla., 1936) 13 F. Supp. 834;

Robins Dry Dock & Repair Co. v. Navigacione Libera Triestina, S.A., 261 N.Y. 455, 185 N.E. 698.

Appellant States Marine contends that the shipowner cannot recover from the tug company for pilot negligence even though not bound by a pilotage clause because of the terms of the time charter. Appellant's contention that Victory Carriers, Inc. was precluded under the terms of the time charter from exacting damages from Red Stack, who was not a party to the time charter, states precisely the error which was corrected by the Court of Appeals for the Second Circuit in its second opinion in *The West Eldara,* (1939) 104 F.2d 670, cert. den. 308 U.S. 607, which also involved a charter whereby the charterer was to provide and pay for pilotage while the owner remains responsible for navigation. As the court stated at p. 671:

"Under this time charter which was not a demise, it is clear that the navigation of the vessel was the responsibility of the owner rather than that of the charterer. As between those two the acts or omissions of the tug boat captain while in charge of the vessel would be the acts or omissions of the owner even though he had been put in control by the charterer by virtue of its right to do so in accordance with the terms of clause 2 of the charter. *Munson S.S. Line v. Glasgow Navigation Co.,* 2 Cir., 235 F. 64; *The Volund,* 2 Cir., 181 F. 643.

"The error in the former opinion which led to an erroneous result lay in the extension of the above principle beyond the owner-charterer relationship so as to control in respect to liability as between the owner and third persons. *Bramble v. Culmer,* 4 Cir., 78 F. 497, on which especial reliance was placed, did not go so far nor did the other cases cited.

"On the contrary, in the absence of any special contract provisions like those in the pilotage clause which are not here binding upon the owner, one who is under contract to dock or undock a vessel is responsible as principal to the owner of the ship for the negligence of the agent whom the contractor places on the ship in charge of the operation. *The Edward G. Murray,* 2 Cir., 278 F. 895, 898; *Sturgis v. Boyer,* 24 How. 110, 16 L.Ed. 591; *The W. S. Holbrook,* D.C., 294 F. 908, affirmed 2 Cir., 294 F. 911. Such negligence is that of an independent contractor who has taken over the navigation of the ship. *The Dorset,* 4 Cir., 260 F. 32, 35; *Wilmington Ry. Bridge Co. v. Franco-Ottoman S. Co.,* 4 Cir., 259 F. 166."

Certain recent cases which extended the protection of contract, viz., bill of lading, defenses to third parties, viz., stevedores, not a party to the contract, have just been soundly overruled by the U. S. Supreme Court by its affirm-

ance of the Court of Appeals for the Fourth Circuit in *Robert C. Herd & Company v. Krawill Machinery Corporation,* (1959) 359 U.S. 297.[2] Appellant States Marine in its application for an extension of time within which to file its opening brief, alleged that the decision of the Supreme Court in the said *Herd* case might be dispositive of this appeal, if a reversal. The Supreme Court affirmed. Appellant undaunted proceeds.

Appellant urges that the alleged protection of the time charter must extend to Red Stack to assure States Marine of the benefit of such protection because it may incur indemnity liability to Red Stack. Appellant conjectures that the Supreme Court in the *Herd* case would have so extended it for this reason (Br. pp. 23 and 24). This is highly unlikely since the *Herd* case cited and quoted with approval the previous decision in *Brady v. Roosevelt S.S. Co.,* 317 U.S. 575. This case held that Congress in the Suits in Admiralty Act had not extended any personal immunity to a private operator of a government ship and recognized, *a fortiori,* the "ancient principle" of agents' liability for negligence to third parties, saying:

> "* * *. As stated in *Sloan Shipyards Corp. v. Emergency Fleet Corp.,* 258 U.S. 549, 567, 'An instrumentality of government he might be and for the greatest ends, but the agent, because he is agent, does not cease to be answerable for his acts.' " (p. 580).

The court then went on to consider the effect of the argument that the government would be ultimately liable because it had an indemnity contract with its agent. The Supreme Court in the *Brady* case disposed of this argument, saying at page 583:

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2. *Collins v. Panama R. Co.,* 197 F.2d 893 and other cases listed in footnote 8 of the opinion of the Supreme Court in *Herd.* These include the recent cases cited by appellant in its brief and on its motion for reconsideration in the court below (Tr. 36, 37).

> "Moreover, if petitioner had a cause of action against respondent, it is difficult to see how she could be deprived of it by reason of a contract between respondent and the Commission. Immunity from suit on a cause of action which the law creates cannot be so readily obtained."

Appellant relies extensively on *Elder, Dempster & Co., Ltd. and others v. Paterson, Zochonis & Co. Ltd.* (1924) A.C. 522; (1924) 18 Ll.L.Rep. 319 (Br. pp. 19 and 20). The United States Supreme Court also considered this same argument based upon the same case in the *Herd* decision, and said at page 307 of this opinion, 359 U.S.:

> "A careful reading of the several lengthy opinions of their lordships in that case (referring to *Elder, Dempster*) discloses that the question whether a provision in the bill of lading limiting the liability of the carrier likewise limits the liability of its negligent agent, though the agent is neither a party to nor an express beneficiary of the bill of lading, was not involved in or decided by that case."

The Supreme Court in *Herd* expressly or impliedly disapproved the remaining cases relied upon by appellant States Marine, as it expressly held against appellant's contention for vicarious immunity for agents.

About one week following the *Herd* decision, an English court reached the same result and similarly interpreted the *Elder, Dempster* case. This was the decision of Mr. Justice Diplock, in the High Court of Justice, Queen's Bench Division (Commercial List), on April 28, 1959, in *Midland Silicones Limited v. Scruttons Limited* (not yet officially reported to our knowledge). Excerpts are quoted herewith to show the issue and holding:

> "Mr. Justice Diplock: This is a test case brought to determine whether stevedores engaged by the ship-

owner (or carrier), who, in performance of their functions as stevedores, in loading, unloading or delivering cargo, tortiously damage that cargo, can, in an action for tort brought against them by the cargo-owner, rely upon any immunity from or limitation of liability contained in the contract of affreightment made between the cargo-owner and the shipowner (or carrier) by whom the stevedores are engaged.

"This question has been much debated in this country in the past 25 years, but has not yet been authoritatively decided here. In Australia it was authoritatively decided in the negative by a majority judgment of the High Court of Australia in 1956. (*Wilson v. Darling Island Stevedoring Company,* 1956 1 Lloyd's List Reports, page 346). This overruled two earlier decisions by lower courts. In the United States, after considerable litigation, with varying results, it was authoritatively decided in the same sense as recently as last week by a unanimous judgment of the United States Supreme Court in *Robert C. Herd & Company v. Krawill Machinery Corporation,* the reference to which I cannot give.

"* * *.

"I respectfully agree with Lords Justices Jenkins and Morris in *Adler v. Dickson* and with Mr. Justice Fullager and Mr. Justice Kitto in *Wilson v. Darling Island Stevedoring Company* and with the Supreme Court of the United States that the *Elder, Dempster* case is no authority for the principle of vicarious immunity from liability for torts, and that Lord Justice Scrutton incorrectly stated its effect.

"* * *.

"I myself think that the present case is governed by the simple, fundamental, though no doubt old-fashioned, principles laid down by Lord Haldane and approved by the House of Lords in *Dunlop v. Selfridge,* and that the Defendants cannot limit their liability to the Plaintiffs in tort by relying upon a contract between the Plaintiffs and a third party to which they were not

parties, and for which they gave no consideration to the Plaintiffs. If in so deciding I am differing from the views expressed obiter by such distinguished lawyers as Lord Justice Scrutton and Lord Denning, I am fortified by the knowledge that a similar conclusion has been reached by the High Court of Australia and the Supreme Court of the United States for reasons much better and, in the latter case, succinctly expressed than my own.

"There will be Judgment for the Plaintiffs for £ 500 and something."

Needless to say, the *Herd* case disposes of this phase of appellant's argument.[3] Admittedly, the time charter is not expressly for the benefit of tug companies and, of course, the tug company is not a party to it. Appellant's argument that it should be construed as impliedly for the benefit of tug companies resulting in a vicarious immunity is completely spurious. Even if States Marine would have a defense if piloting themselves, the Supreme Court has ruled conclusively that this avails nothing to third parties they hire.

We believe the argument, and particularly the Restatement sections, are inappropriate to this case in any event.

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3. The former decision of this court in *Twentieth Century Delivery Service v. St. Paul Fire & Marine Ins. Co.*, (9th Cir., 1957) 242 F.2d 292, which is cited by appellant and also referred to in footnote 8 by the Supreme Court in the *Herd* case, is not in point on the question of implied immunity since the contract involved in that case, which happened to be a tariff, expressly provided that it should "inure to the benefit of any other person, firm or corporation performing for the carrier pickup, delivery or other ground service in connection with the shipment." 242 F.2d at p. 295. Vicarious immunity is particularly disfavored in Admiralty. See e.g. *The Childar* (9th Cir.) 83 F.2d 746, 1936 A.M.C. 724, holding that the shipowner's immunity from suit by seamen for personal injuries under the General Maritime Law does not protect a negligent pilot; and *International Milling Co. v. SS Perseus* (D.C. Mich.) 1958 A.M.C. 526, holding that the shipmaster may be liable for negligent navigation damaging cargo even though the shipowner is immune from such liability.

States Marine had no *privilege* to damage the vessel by the terms of the time charter, or otherwise. If States Marine had no duty vis-a-vis the owners to pilot carefully, this is because the performance of piloting is not its function[4] under the time charter. This does not afford any basis for holding that Red Stack, an independent contractor[5] who had undertaken the job of piloting, had no duty to pilot carefully.

II. ANSWER TO "ARGUMENT II" OF STATES MARINE

The Finding of the District Court That States Marine Was Not Authorized to and Did Not Bind Victory Carriers to the Pilotage Clause Is Clearly Correct.

Although on their motion for reconsideration in the District Court States Marine referred to the question of "agential immunity", discussed in the last section of this brief, as "the sole question presented by the present case" (Tr. 37), they now additionally assert that Victory Carriers, Inc. was bound by the pilotage clause. In fact, this is simply another attempt to bind a non-contracting party to a contract. The time charterer has no power to bind the shipowner to special release contracts with the tug company. Just as he cannot pass on the benefit of any time charter clauses to the tug company who is not a party to it, he cannot pass on the detriment of any special clauses of the towage or pilotage contract to the shipowner who is not a party to it.

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4. Interestingly enough, in order to make their argument in this case States Marine has found it necessary to assert that the performance of piloting is its function (Br. pp. 8, 11, 19) which performance it allegedly delegates to Red Stack.

5. The authorities uniformly holding that when a tug company is hired to dock or undock the vessel, it does so as an independent contractor, are collected at footnote 5 of the opinion in the *Jules Fribourg,* supra.

As States Marine anticipated in its affidavit for extension of time, the Supreme Court decision in the *Herd* case is also determinative of this point.

The tug company is employed by the time charterer and by no one else, although the tug company thereupon handles the owner's property. Just as a carrier has no authority to bind the cargo-owner to special contracts with the stevedore he provides to handle the owner's cargo, a time charterer has no authority to bind the vessel owner to special contracts with the tug company he provides to handle the owner's vessel. We should point out further that the only conceivable consideration given for the release provisions of the pilotage clause is presumably a reduced rate. The benefit of any reduced rate inures to States Marine, who pays for the pilotage, not to Victory Carriers, Inc. The reasoning of *Herd* and the cases it relies on, as well as the more recent English case, is dispositive of both arguments of States Marine directed against Victory Carriers, Inc.

However, we should go on to point out that on this phase, States Marine seeks a reversal of findings of fact made against them by the trial judge.

The District Court expressly found that Victory Carriers, Inc. was not bound by the pilotage clause (Finding VII, Tr. 43). This finding was based on substantial evidence. States Marine did not call a single witness who participated in their transactions with owners or with Red Stack. In fact, they did not call any witnesses (Tr. 73). Victory Carriers, Inc. was never advised of nor notified of the pilotage clause which States Marine accepted (Tr. 65). There is no evidence that the master of the SS Lewis Emery, Jr. had ever seen any pilotage clause in San

Francisco. His testimony (which was not printed) is expressly to the contrary.

Customary use of pilotage clauses was not proved and is irrelevant in any event. At best, the evidence suggests that various forms of pilotage clauses are customary with Red Stack. In view of the broad trading limits in the charter, the owner does not know that the vessel will be sent to San Francsico at all. As previously discussed, there is no need or certainty that Red Stack be used even on a San Francisco call.

Appellant mentions that Victory Carriers, Inc. had through its own agents used Red Stack on occasions prior to this collision.[6] This supports no inference that the owners authorized States Marine to bind them to a pilotage clause on this occasion. It was so held in *The West Eldara,* supra, where the evidence was that the owners had made prior agreements *on their own behalf* of which the pilotage clause was a part (see Opinion of the District Court reported in 1938 A.M.C. 282, at 285).

In its Finding No. VII (Tr. 43) the District Court found on substantial evidence that "Victory Carriers, Inc. took no part in requesting the towage service. The request was made solely by and on behalf of States Marine, and all charges for tug and pilot service involved in the operation were billed to and paid by States Marine. In dealing with Shipowners & Merchants (Red Stack), States Marine was not authorized to, and did not bind Victory Carriers to the terms of the pilotage clause and Victory Carriers was not contractually bound thereby." This finding is not only not "clearly erroneous", it is eminently correct. It is

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6. These were movements for the account of the Department of the Navy, Military Sea Transportation Service. The Red Stack bills were paid by the vessel's agents for the account of Military Sea Transportation Service (Tr. 79).

identical to the holding in *The West Eldara,* 104 F.2d 670;[7] *The Niels R. Finsen,* (S.D.N.Y., 1931) 52 F.2d 795, and the *Jules Fribourg,* supra. The contention on page 31 of appellant's brief that such holdings were not necessary to the decision in the particular cases is frivolous. Being bound by the pilotage clause will entirely defeat recovery for pilot negligence. In all these cases, the shipowner was granted recovery for pilot negligence. The most that can be said on behalf of appellant is that in the *Jules Fribourg,* supra, the holding that the time charterer did not bind the shipowner to the pilotage clause was an alternative ground for the decision.

> "For it appears that under the circumstances of this case, the pilotage clause is a nullity for two reasons.
>
> "The first is that the owner of the *Jules Fribourg* is not contractually bound by the clause."
>
> *People of California v. S.S. Jules Fribourg,* 140 F. Supp. 333; 1956 A.M.C. 939, 946.

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7. It should be noted that this was the last of three separate hearings in *The West Eldara* case resulting in three different decrees and the courts never once varied in their ruling on the pilotage clause. All three decisions stated expressly that the charterer was without authority to bind the owner to the clause. We urge the court to examine all three decisions. The District Court opinion is reported at 1938 A.M.C. 282; the first decision of the Court of Appeals at 101 F.2d 45.

Appellant's opening brief (pp. 28 and 29) refers to the citation in one part of the last opinion in *The West Eldara* of *The Kate* (1896) 164 U.S. 458 in support of the court's conclusion that the pilotage clause was not binding on the owner. The brief implies that *The Kate* was overruled by *Dampskibsselskabet v. Oil Co.,* 310 U.S. 268. However, as the brief is careful to point out (albeit not too clearly) the result in *The Kate* regarding creation of maritime liens (not involved in this case) was changed by the Maritime Lien Act of 1910, 36 Stat. 604 (erroneously referred to in appellant's brief as the Act of 1920). The law of *The Kate,* absent a specific applicable statute, was not disturbed. *Dampskibsselskabet v. Oil Co.* did not deal with *in personam* liability in any event. We should add that the result in *Dampskibsselskabet v. Oil Co.* would not obtain under the Lewis Emery, Jr. charter since Clause 18 prohibits the creation of liens by a charterer in the same terms as the charter in *U. S. v. Carver,* 260 U.S. 482, discussed in *Dampskibsselskabet v. Oil Co.,* 310 U.S. at page 275.

III. ANSWER TO ARGUMENTS III, IV AND V OF STATES MARINE

These sections of the brief contain arguments which do not adversely affect Victory Carriers, Inc.

CONCLUSION

The interlocutory decree of the District Court granting libelant full recovery against Red Stack should be affirmed.

Respectfully submitted,

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